

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 787 of 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE A.L.DAVE****HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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DILIPSINH HARISINH THAKUR - Appellant(s)**Versus****STATE OF GUJARAT & 1 - Opponent(s)**

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Appearance :

MR BM GUPTA for Appellant(s) : 1,

MR PD BHATE, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**and****HONOURABLE MR.JUSTICE SHARAD D.DAVE****Date : 26/06/2007****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)**

1. The present appeal is directed against the judgment and order dated 1.7.1999 delivered by the learned Additional Sessions Judge, Ahmedabad in Sessions Case No.97 of 1997, whereby learned Additional Sessions Judge convicted the appellant for the offence punishable under Section 302 of Indian Penal Code and sentenced him to undergo imprisonment for life and fine of Rs.100/-, in default, simple imprisonment for seven days.

2. The case of the prosecution in brief is that deceased Daxaben was the wife of the accused and was residing at Navdurga Chowk, Block No.1157, Gota Housing, Ahmedabad. That she was married to the accused before about five years. That on 3.4.1997 at about 8.00 hours in the night, the accused - husband of the deceased came home in a drunken condition and there was a quarrel between them on the point of illicit relation of her husband with Rajni @ Jayshree d/o Jesingbhai Baldevbhai Chauhan and during the quarrel the accused brought kerosene from his house and poured the same on the deceased and set her ablaze, because of which the deceased started screaming and the neighbours gathered and tried to put off the flames. The accused, on seeing every body doing so, also acted to put off the flames and then took the deceased to the Civil Hospital. The complaint of the deceased was recorded in the Civil Hospital. The deceased died during the treatment at the hospital.

3. The police recorded the complaint of the deceased before her death and, therefore, on the basis of the same, the case was registered and the investigation was carried out. The Investigating Officer drew the panchanama of scene of offence in presence of panchas, inquest panchanama of the body of the deceased, got the post-mortem of the body done and obtained its report, obtained the written compromise arrived at in Jyotisingh between the accused and the deceased, sent necessary muddammal from the place of offence to the F.S.L., and obtained the report of the F.S.L., recorded the statements of the witnesses and at the end of investigation, submitted the charge sheet against the accused before the Judicial Magistrate, First Class, Ahmedabad.

4. As the charge against the accused was exclusively triable by the Court of Sessions, learned J.M.F.C., committed the case to the Sessions Court, Ahmedabad under Section 209 of the Criminal Procedure Code.

5. Learned Additional Sessions Judge framed the charge against the accused for the offences punishable under Sections 302, 498(a) of the Indian Penal Code. As the accused pleaded not guilty and claimed to be tried, learned Additional Sessions Judge recorded the evidence of the prosecution and then recorded further statement of the accused under Section 313 of the Criminal Procedure Code wherein he has denied the charge against him and stated that he is falsely implicated by the family members of the

deceased.

6. Learned Additional Sessions Judge, after appreciating the evidence on record and having heard learned advocates for both the parties, convicted and sentenced the accused under Section 302 of Indian Penal Code, as stated above. However, learned Additional Sessions Judge acquitted the accused for the offence under Section 498(a) of the Indian Penal Code by giving benefit of doubt.

7. This appeal is filed by the accused - convict against the conviction imposed upon him under Section 302 of the Indian Penal Code. The State has not preferred any appeal against the acquittal under Section 498(a) of the Indian Penal Code.

8. Heard learned advocate Mr.C.B.Gupta for the appellant and Mr.P.D.Bhate, learned APP for the State and perused the record and proceedings of the trial Court.

9. Mr.Gupta submitted that history given by the victim to the doctor at the hospital is about accidental death. He further submitted that the FIR and dying declaration are developed after arrival of the parents of the deceased. He also submitted that the accused has also received 2% burn injuries while trying to put off the flames on the deceased and thereafter the accused himself took the victim to the Sola Hospital and thereafter to the Civil Hospital for treatment. In his submissions, therefore, conduct of the accused itself is suggestive of the fact that

the deceased died due to accidental death while she was trying to light the stove. He also submitted that the deceased sustained 95% burn injuries and, therefore, possibility of certain infirmities in dying declaration cannot be ruled out. In support of his submissions, Mr.Gupta has placed reliance on the decisions in the cases of Sanjay V/s State of Maharashtra, reported in 2007 AIR SCW 1710, State of Maharashtra V/s Sanjay D Rajhans, reported in AIR 2005 SC 97 and P.Mani V/s State of T.N., reported in AIR 2006 SC 1319. He, therefore, submitted that learned Sessions Judge has committed serious error in convicting the appellant accused and therefore, prayed to allow this appeal and set aside the impugned judgment and order.

10. On the other hand, learned APP Mr.Bhate submitted that there are two consistent dying declarations by which it is amply clear that the accused is involved in the offence in question. He further submitted that the said dying declarations were recorded while the victim was conscious and not under the influence of her parents. He further submitted that no cooking material found at the place of offence and this has been clearly proved by the deposition of the panchas. He, therefore, requested to dismiss this appeal.

11. It can be seen from the deposition of Ranjitsinh Virsangbhai Gohil, Executive Magistrate who recorded dying declaration of the deceased, more particularly in the cross-examination that the dying declaration was not recorded of the mother of the

deceased and that the deceased was conscious. Therefore, the contention of the learned advocate for the appellant that the FIR and dying declarations are developed after the arrival of the parents of the deceased is ill founded.

12. It can also be seen from the deposition of Dr.Hasumati Ranchhodbhai Patel who performed the postmortem of the dead body of the deceased wherein she has specifically stated that it is not true that all the burn injuries were received by the deceased because of the flames of stove. Further, the cause of death as can be seen from the postmortem report is as a result of burns all over the body and its certiation (vide original).

13. Further, the complaint Exh.14 which is first in point of time is given by deceased Daxaben w/o the accused Dilipsinh wherein the deceased has stated that because of quarrel with her husband on the point of illicit relation with Rajni @ Jayshree, her husband had sprinkled kerosene on her and set her ablaze.

14. It can also be seen from the panchanama of the scene of offence and the FSL report that no cooking material has been recovered from the scene of offence. On the contrary, 2/12 ltrs., kereosene in a tin of 5 ltrs., was found and that the presence of kerosene was also found on the sample recovered from the scene of offence. Therefore, the contention of the learned advocate for the appellant that the death of the deceased is accidental is ill founded. On the

contrary, the articles recovered from the scene of offence support the say of the deceased in the dying declaration.

15. FSL report at Exh.38 clearly states that hydrocarbons of kerosene were found from saree, chaniyo and other clothes of the deceased, mattress, match box and half lighted match stick. If the deceased had caught fire accidentally from flame of the stove, there could not have been presence of kerosene in the clothes worn by her. Presence of kerosene in clothes of the deceased rules out the possibility of accident. Therefore, learned Sessions Judge has rightly come to the conclusion that the deceased has died due to sprinkling of kerosene over the deceased.

16. The first version as to incident recorded by the doctor in form of case history is that the deceased suffered accidental burns while cooking. Much emphasis was given by learned advocate for the appellant on this aspect. But, when we perused the evidence, it has come in evidence that the deceased was taken to hospital by the appellant. It also emerges from evidence that history was given by relatives and deceased. This explains how the history of accidental burns has been recorded. Not much importance can be accorded to the case history recorded by doctor when there are two other dying declarations of the deceased recorded in her own words by competent officers. The version emerging from case history does not get support from circumstances, whereas the version in dying

declaration by the Executive Magistrate and FIR gets support from circumstantial evidence, viz., presence of kerosene on clothes of the deceased. The inconsistency between case history recorded by doctor and dying declarations, therefore, loses significance.

17. Further, there is no inconsistency either in the statement recorded before Navalsinh Gopalsinh Vaghela, P.S.I., Sarkhej Police Station or in the dying declaration recorded before the Executive Magistrate.

18. The deposition of the mother of the deceased Indiraben Bhagwansinh Chauhan and the deposition of the uncle of the deceased Nanusinh Fulsinh also support the say of the deceased in both the dying declarations.

19. In that view of the matter, the prosecution has proved beyond reasonable doubt that the accused has sprinkled kerosene on the deceased and set her ablaze with an intention to cause the death of the deceased which ultimately resulted in the death of the deceased.

20. We have also considered the decisions relied upon by the learned advocate appearing for the appellant accused. Having considered the above referred judgments and in view of the aforesaid discussion, the appeal preferred by the appellant accused deserves to be dismissed.

21. In the result, the appeal is dismissed. The conviction and sentence awarded by the learned Sessions Court at Ahmedabad in Sessions Case No.97 of 1997 is confirmed.

(A.L.Dave, J)

(Sharad D.Dave, J)

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